

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

FRANK L. JUDE, JR.

Plaintiff,

and

STATE OF WISCONSIN DEPARTMENT
OF JUSTICE, OFFICE OF CRIME VICTIM
COMPENSATION SERVICES and STATE
OF WISCONSIN, DEPARTMENT OF HEALTH
AND FAMILY SERVICES,

Involuntary Plaintiffs, .

v.

Civil Case No.: 06-C-1101

CITY OF MILWAUKEE, a municipal corporation,
OFFICER ANDREW R. SPENGLER, JON
BARTLETT, DANIEL MASARIK, RYAN PACKARD,
RYAN LEMKE, JON CLAUSING, JOSEPH
SCHABEL, MICHELE ROMAN (f/k/a MICHELE
BARTLETT, and NICOLE BELMORE
(f/k/a NICOLE MARTINEZ),

Defendants.

**RESPONSE TO FRANK L. JUDES, JR.'S, MOTION FOR JUDGMENT ON THE
PLEADINGS**

INTRODUCTION

The Defendant, Joseph Schabel (hereinafter "Schabel"), by his attorneys,
SCHIRO & ZARZYNSKI, submits this Response to Plaintiff, Frank L. Jude, Motion for
Judgment on the Pleadings.

BACKGROUND

Schabel filed an Answer to Jude's Amended Complaint on October 19, 2009, and
specifically admitted to his own unlawful conduct:

“The defendant, Joseph Schabel, admits to his own unlawful conduct, as described in case number 06-CR-256, *United States of America v. Joseph Schabel*, and as specifically described in the plea agreement signed and filed on October 4, 2006, see Exhibit A.”

See Defendant, Joseph Schabel’s, Answer to Plaintiff’s Amended Federal Complaint, Affirmative Defenses, Cross Claim Against All Defendants, Answer to All Cross-Claims at ¶ 46-57. Schabel also answered that he was unable to state with particularity the exact circumstances of his alleged action. *Id.* at ¶ 44. Schabel affirms his previous answer.

ARGUMENT

I. SCHABEL DEFERS TO, AND HEREIN INCORPORATES BY REFERENCE, ANY AND ALL ARGUMENTS THAT THE CITY OF MILWAUKEE MAY ASSERT ON HIS BEHALF.

As stated, Schabel entered into plea agreement on October 4, 2004, in the Eastern District of Wisconsin regarding the *United States v. Joseph Schabel* 06-CR-256. See Exhibit 1. The terms and conditions of said plea agreement may preclude Schabel from taking any position contrary to its terms and the factual assertions contained therein. In other words, Schabel affirms his previous admissions and answers from said plea hearing.

Schabel has always maintained, and continues to assert, that at all material times germane to the instant matter, that he was employed as a City of Milwaukee Police Officer; as such, he is entitled to indemnification pursuant to Wis. Stats. § 895.46(1)(a).

In light of the above-mentioned, Schabel, defers to, and herein incorporates by reference, any and all arguments that the City of Milwaukee may assert on his behalf relating to Jude’s Title 42, United States Code, Section 1983 Claim against him. As such, Schabel adopts their response to the instant motion.

Dated at Milwaukee, Wisconsin this 28th day of December, 2009.

Respectfully submitted,
SCHIRO & ZARZYNSKI
Attorneys for Defendant,
OFFICER JOSEPH SCHABEL



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